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10 **BEFORE THE**  
**RESPIRATORY CARE BOARD**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

12 In the Matter of the Petition to Revoke Probation  
Against:

13 ALLAN A. CONNEL  
14 3954 ½ Hawk Street  
San Diego, CA 92103

15 Respiratory Care Practitioner  
16 License No. 23512,

17 Respondent.

Case No. R-1978

**PETITION TO REVOKE  
PROBATION**

18  
19 Complainant alleges:

20 **PARTIES**

21 1. Stephanie Nunez (Complainant) brings this Petition to Revoke Probation  
22 solely in her official capacity as the Executive Officer of the Respiratory Care Board of California,  
23 Department of Consumer Affairs.

24 2. On or about March 31, 2004, the Respiratory Care Board issued  
25 Respiratory Care Practitioner License No. 23512 to ALLAN A. CONNEL (Respondent). The  
26 license was in effect at all times relevant to the charges brought herein, and will expire on February  
27 28, 2007, unless renewed.

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3. In an action entitled "In the Matter of the Statement of Issues Against ALLAN A. CONNEL," Case No. S-329, the Respiratory Care Board issued a decision, effective March 31, 2004. Respondent was issued a conditional license to practice Respiratory Care, which was placed on probation to the Board for a period of three (3) years with terms and conditions. A copy of that decision is attached hereto as Exhibit A and incorporated by reference as if fully set forth herein.

## JURISDICTION

4. This Petition to Revoke Probation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 3710 of the Code states, in pertinent part: “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

6. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

7. Section 3750 of the Code states, in pertinent part:

“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

“ . . .

“(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).

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1                   8.       California Code of Regulations (“CCR”), title 16, section 1399.370, states,  
2 in pertinent part:

3                   “For the purposes of denial, suspension, or revocation of a license, a crime  
4 or act shall be considered to be substantially related to the qualifications, functions  
5 or duties of a respiratory care practitioner, if it evidences present or potential  
6 unfitness of a licensee to perform the functions authorized by his or her license or in  
7 a manner inconsistent with the public health, safety, or welfare. Such crimes or  
8 acts shall include but not be limited to those involving the following:

9                   “(a) Violating or attempting to violate, directly or indirectly, or  
10 assisting or abetting the violation of or conspiring to violate any provision or  
11 term of the Act. . . .”

### 12                   **COST RECOVERY**

13                  9.       Section 3753.5, subdivision (a) of the Code states, in pertinent part:

14                  “In any order issued in resolution of a disciplinary proceeding before the board,  
15 the board or the administrative law judge may direct any practitioner or applicant found  
16 to have committed a violation or violations of law to pay to the board a sum not to  
17 exceed the costs of the investigation and prosecution of the case. . . .”

18                  10.       Section 3753.7 of the Code states:

19                  “For purposes of the Respiratory Care Practice Act, costs of prosecution shall  
20 include attorney general or other prosecuting attorney fees, expert witness fees, and  
21 other administrative, filing, and service fees.”

22                  11.       Section 3753.1 of the Code states, in pertinent part:

23                  “(a) An administrative disciplinary decision imposing terms of probation may  
24 include, among other things, a requirement that the licensee-probationer pay the  
25 monetary costs associated with monitoring the probation.”

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### 27                   **FIRST CAUSE TO REVOKE PROBATION**

(Biological Fluid Testing)

12. At all times after the effective date of Respondent's probation, Condition 2 stated:

"Respondent, at his expense, shall participate in random testing, including, but not limited to, biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle testing, or a drug screening program approved by the Board. Test costs range from \$21.00 to \$200.00 each. The length of time shall be for the entire probation period. The frequency and location of testing will be determined by the Board.

"At all times, Respondent shall fully cooperate with the Board or any of its representatives, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances.

"If Respondent is unable to provide a specimen in a reasonable amount of time from the request, while at the work site, Respondent understands that any Board representative may request from the supervisor, manager or director on duty to observe Respondent in a manner that does not interrupt or jeopardize patient care in any manner until such time Respondent provides a specimen acceptable to the Board.

"Failure to submit to testing or appear as requested by any Board representative for testing, as directed shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license."

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13. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 2, referenced above. The facts and circumstances regarding this

violation are as follows: Respondent failed to provide urine specimens when he missed the following test dates: July 6, 2004; August 28, 2004; October 9, 2004; November 22, 2004; December 7, 2004; January 28, 2005; February 23, 2005<sup>1</sup>; and April 19, 2005 (see footnote 1).

## **SECOND CAUSE TO REVOKE PROBATION**

(Abstention From Use of Any and All Mood Altering Substances)

14. At all times after the effective date of Respondent's probation, Condition 3 stated:

"Respondent shall completely abstain from the possession or use of alcohol, any and all other mood altering drugs, substances and their associated paraphernalia, except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment.

"Respondent shall execute a release authorizing the release of pharmacy and prescribing records as well as physical and mental health records. Respondent shall also provide information of treating physicians, counselors or any other treating professionals as requested by the Board.

"Respondent shall ensure that he is not in the presence of or in the same physical location as individuals who are using illegal substances, even if Respondent is not personally ingesting the drug(s).

"Any positive result that registers over the established laboratory cutoff level shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

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"Respondent also understands and agrees that any positive result that registers over the established laboratory cutoff level shall be reported to each of Respondent's employers."

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1. Respondent failed to test when selected on February 23, 2005 and April 19, 2005, and instead, provided a specimen on February 24, 2005 and April 20, 2005.

1                   15.     Respondent's probation is subject to revocation because he failed to comply  
2 with Probation Condition 3, referenced above. The facts and circumstances regarding this  
3 violation are as follows:

4                   A.     On or about April 30, 2004, Respondent tested positive for  
5 Ethanol (alcohol) at a level of 45 mg/dl.

6                   B.     The Board sent Respondent a final warning letter dated May  
7 11, 2004, regarding the April 30, 2004, positive alcohol result. The letter reminded  
8 Respondent that he must abstain from the use of alcohol and any controlled  
9 substances that are not prescribed by a licensed physician and would be disciplined  
10 if any positive result registers over the established cut-off level.

11                  C.     On or about December 17, 2004, Respondent tested positive  
12 for Ethanol at a level of 0.022 g/dl and Ethylglucuronide (ETG) at a level of  
13 360,000 ng/ml.

14                  D.     On or about January 19, 2005, the Board received a Medical  
15 Review Officer ("MRO") report for the specimen collected on December 17, 2004,  
16 verifying the positive test results. The MRO reported Respondent stated that he  
17 was taking Nyquil "More than I should, a lot" at the time of the test and that he  
18 took the maximum allowed on the bottle. The MRO indicated the test results are  
19 not consistent with the use of Nyquil if taken as prescribed.

20                  E.     On or about April 20, 2005, Respondent tested positive for  
21 Ethyl Glucuronide (ETG - alcohol) at a level of 500 ng/ml.

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26                                 **THIRD CAUSE TO REVOKE PROBATION**

27   (Quarterly Reports)

28                   16.     At all times after the effective date of Respondent's probation, Condition 6

1 stated:

2 “Respondent shall file quarterly reports of compliance under penalty of  
3 perjury, on forms to be provided to the probation monitor assigned by the Board.  
4 Omission or falsification in any manner of any information on these reports shall  
5 constitute a violation of probation and shall result in the filing of an accusation  
6 and/or a petition to revoke probation against Respondent’s respiratory care  
7 practitioner license.

8 “Quarterly report forms will be provided by the Board. Respondent is  
9 responsible for contacting the Board to obtain additional forms if needed. Quarterly  
10 reports are due for each year of probation and the entire length of probation as  
11 follows:

12 “For the period covering January 1<sup>st</sup> through March 31<sup>st</sup>, reports are to be  
13 completed and submitted between April 1<sup>st</sup> and April 7<sup>th</sup>. For the period covering  
14 April 1<sup>st</sup> through June 30<sup>th</sup>, reports are to be completed and submitted between July  
15 1<sup>st</sup> and July 7<sup>th</sup>. For the period covering July 1<sup>st</sup> through September 30<sup>th</sup>, reports  
16 are to be completed and submitted between October 1<sup>st</sup> and October 7<sup>th</sup>. For the  
17 period covering October 1<sup>st</sup> through December 31<sup>st</sup>, reports are to be completed  
18 and submitted between January 1<sup>st</sup> and January 7<sup>th</sup>.

19 “Failure to submit complete and timely reports shall constitute a violation of  
20 probation.”

21 17. Respondent’s probation is subject to revocation because he failed to comply  
22 with Probation Condition 6, referenced above. The facts and circumstances regarding this  
23 violation are as follows: Respondent failed to submit his Quarterly Report of Compliance form  
24 covering the period of October 1 through December 31, 2004, which was due to the Board  
25 between January 1 through January 7, 2005.

26 **FOURTH CAUSE TO REVOKE PROBATION**

27 (Probation Monitoring Program)

28 18. At all times after the effective date of Respondent’s probation, Condition 7

1 stated:

2 “Respondent shall comply with requirements of the Board appointed  
3 probation monitoring program, and shall, upon reasonable request, report to or  
4 appear to a local venue as directed.

5 “Respondent shall claim all certified mail issued by the Board, respond to  
6 all notices of reasonable requests timely, and submit Annual Reports, Identification  
7 Update reports or other reports similar in nature, as requested and directed by the  
8 Board or its representative.

9 “Respondent is encouraged to contact the Board’s Probation Program at  
10 any time he has a question or concern regarding his terms and conditions of  
11 probation.

12 “Failure to appear for any scheduled meeting or examination, or cooperate  
13 with the requirements of the program, including timely submission of requested  
14 information, shall constitute a violation of probation and will result in the filing of  
15 an accusation and/or a petition to revoke probation against Respondent’s respiratory  
16 care practitioner license.

17 19. Respondent’s probation is subject to revocation because he failed to comply  
18 with Probation Condition 7, referenced above. The facts and circumstances regarding this  
19 violation are as follows: Respondent is required to call the drug testing program’s automated  
20 telephone system on a daily basis. The failure to call is a violation of probation. Respondent  
21 missed the following call dates: May 2, 21, 2004; June 14, 2004; September 23, 2004; November  
22 6, 12, 14, 16, 22, 27, 30, 2004; December 16, 2004; January 29, 2005; February 7, 8, 9, 10, 24,  
23 2005; March 2, 6, 10, 13, 15, 16, 22-26, 28, 2005; April 21, 24, 26, 2005; and May 2, 4-13, 15-  
24 16, 2005.

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26 **FIFTH CAUSE TO REVOKE PROBATION**

27 (Probation Monitoring Costs)

28 20. At all times after the effective date of Respondent’s probation, Condition 8



1 stated:

2 “All costs incurred for probation monitoring during the entire probation  
3 shall be paid by the Respondent. The monthly costs may be adjusted as expenses  
4 are reduced or increased. Respondent’s failure to comply with all terms and  
5 conditions may also cause this amount to be increased.

6 “All payments for costs are to be sent directly to the Respiratory Care  
7 Board and must be received by the date(s) specified. (Periods of tolling will not toll  
8 the probation monitoring costs incurred.)

9 “If Respondent is unable to submit costs for any month, he shall be required  
10 instead to submit an explanation of why he is unable to submit the costs, and the  
11 date(s) he will be able to submit the costs including payment amount(s).  
12 Supporting documentation and evidence of why the Respondent is unable to make  
13 such payment(s) must accompany this submission.

14 “Respondent understands that failure to submit costs timely is a violation of  
15 probation and submission of evidence demonstrating financial hardship does not  
16 preclude the Board from pursuing further disciplinary action. However,  
17 Respondent understands providing evidence and supporting documentation of  
18 financial hardship may delay further disciplinary action.

19 “In addition to any other disciplinary action taken by the Board, an  
20 unrestricted license will not be issued at the end of the probationary period and the  
21 respiratory care practitioner license will not be renewed, until such time all  
22 probation monitoring costs have been paid.

23 “The filing of bankruptcy by Respondent shall not relieve the Respondent  
24 of his responsibility to reimburse the Board for costs incurred.”

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27 21. Respondent’s probation is subject to revocation because he failed to comply  
28 with Probation Condition 8, referenced above. The facts and circumstances regarding this

1 violation are as follows: Respondent's probation monitoring payment of \$100 for the period of  
2 March 2005 through April 2005 is in arrears and was due to the Board no later than April 30,  
3 2005.

4 **PRAYER**

5 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
6 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

7 1. Revoking the conditional license that was granted by the Respiratory Care  
8 Board of California in Case No. S-329;

9 2. Revoking the probation that was granted by the Respiratory Care Board of  
10 California in Case No. S-329;

11 3. Ordering ALLAN A. CONNEL to pay the Respiratory Care Board the  
12 costs of the investigation and enforcement of this case, and if probation is continued or extended,  
13 the costs of probation monitoring;

14 4. Taking such other and further action as deemed necessary and proper.

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16 DATED: May 23, 2006

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19 Original signed by Liane Zimmerman for:  
20 STEPHANIE NUNEZ  
21 Executive Officer  
22 Respiratory Care Board of California  
23 Department of Consumer Affairs  
24 State of California  
25 Complainant  
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